



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. HMA 9724-08

BE KIND HEALTH CARE SERVICES,

Petitioner,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES,

Respondent.

Stanley M. Varon, Esq., for petitioner

Stephanie M. Beaty, Deputy Attorney General, for respondent (Anne Milgram,
Attorney General of New Jersey, attorney)

Record Closed: May 5, 2009

Decided: June 4, 2009

BEFORE **CARIDAD F. RIGO, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In a letter dated July 28, 2008, the Division of Medical Assistance and Health Services (DMAHS) terminated Be Kind Health Care Services, the petitioner, from New Jersey Medicaid programs. The DMAHS terminated petitioner from the programs alleging that an audit revealed forgery on pertinent forms. The forms authorized

Personal Care Assistance (PCA) services to Medicaid beneficiaries and petitioner billed Medicaid for those services.

Petitioner appealed the termination and requested a fair hearing. The matter was transmitted to the Office of Administrative Law (OAL) on August 21, 2008. On November 6, 2008, petitioner applied to DMAHS for emergent relief seeking immediate reinstatement of Be Kind's provider number, provider status and immediate reimbursement for claims submitted previous to the termination. The Director of the DMAHS transmitted the matter to the OAL for an emergency hearing. N.J.A.C. 1:1-12.6. The matter was scheduled and heard on February 3 and 13, 2009. The record remained open awaiting closing briefs and exhibits which were received.

ISSUE

Did petitioner forge or falsify physician signatures on forms which purported to authorize Personal Care Assistance (PCA) to Medicaid beneficiaries?

FACTUAL BACKGROUND

Petitioner is a New Jersey corporation established in July 2004 for the purpose of providing personal health care services for client/patients as directed by their physicians in their homes. Isaac Arowosaye is the chief executive officer and sole shareholder of Be Kind Health Care Services, Inc.

The petitioner, through its chief executive officer, testified that they serviced patients that were referred to them from nursing homes, physicians and social workers or social service agencies. Once a referral came a nurse went to the patient's home and assessed the patient's personal care needs and a plan of care was established. The plan of care was outlined in a form called the CMS 485. The Be Kind office staff was to then send the 485 forms to the physician for his/her signature of approval and/or certification of the needed services. Once the 485 forms were signed by the physician Be Kind was to provide the services and then process the case for payment by Medicaid.

STIPULATED FACTS

The parties stipulated to the following **FACTS**:

1. Petitioner is not required to forward a copy of the CMS 485 form to the Medical Assistance Customer Center (MACC) for pre-authorization of Personal Care Assistance services (PCA).
2. Pre-authorization for PCA services is obtained from the Division of Disability Services (DDS).
3. DDS does not require the Medicaid provider to submit the CMS 485 as a part of the pre-authorization review process.
4. DMAHS requires the Medicaid provider to keep the CMS 485 form in its files at the provider's offices for auditing purposes.
5. A Medicaid provider can submit prior authorization requests for PCA services on paper where the Medicaid provider submits a prior authorization request form to DDS along with a PCA beneficiary assessment tool. See Exhibit A.
6. A Medicaid provider can submit prior authorization for PCA services by submitting the request electronically.
7. Be Kind submits its requests electronically to DDS and those submissions are reviewed online by DDS staff.
8. Electronic filers submit electronic versions of the prior authorization request forms, which includes the PCA assessment tool. See Exhibit B.

9. The MACC staff does not review requests for pre-authorization. DDS staff reviews PCA pre-authorization requests. Some DDS staff work out of MACC offices.

SUMMARY OF TESTIMONY

(Thomas R. Ortiz, M.D.)

Dr. Ortiz testified on behalf of the respondent. Dr. Ortiz said that he is a licensed doctor of twenty-six years.

Dr. Ortiz stated that he knows that the 485 forms pertain to home health care. He said that the 485 forms are received in his office and he signs them. He stated that he is the only one in his office to sign these forms. He does not authorize anyone else to sign them. He was shown exhibit R-8 which was his voluntary statement. He acknowledged signing the statement and making the comments therein.

Dr. Ortiz stated that he had a patient named M.M. However, he did not sign a 485 form for her. He said he never prescribed home health services for M.M. He said that if he had been presented with a 485 form for her he would have signed it. But, the 485 form that was presented to him for M.M. he did not sign. He said he did not recognize the handwriting on the 485 forms. He said M.M. was still his patient and under his care.

(Padma Siripurapu, M.D.)

Dr. Siripurapu is an internist licensed to practice medicine since 1999. She practices in Newark, New Jersey, for the Community Health Center. She said she is the only primary care physician located there.

Dr. Siripurapu stated that she signed exhibit R-5. She testified that the patient C.C. named in the 485 form contained in exhibit R-6 was not her patient. She said she

had no patient chart for him. She acknowledged that the signature on the form was hers but that she did not authorize said signature because the patient was not hers.

Under cross-examination she was shown another 485 form also contained in exhibit R-6, the patient in this form is T.J. The doctor testified that T.J. was her patient but that the signature on the 485 form was not hers.

(Dora Barnes, M.D.)

Dr. Barnes testified that she is an internist and licensed to practice medicine since 1979. She practices in East Orange, New Jersey.

Dr. Barnes was shown form 485 contained in exhibit R-2. Dr. Barnes stated that the physician's signature in the 485 form is not hers. She said she is the only one authorized to sign such forms in her office. She only has one other person working for her. She does not authorize anyone in her office to sign anything. She did not recognize the physician signature or the handwriting in box 27 of the 485 form.

She said that the 485 form was for a patient of hers named R.W.M. and that R.W.M. was a rather new patient at the time the 485 form was allegedly completed.

(Sucheta M. Nasta, M.D.)

Dr. Nasta testified that she is a licensed physician since 1977, her offices are located in East Orange, New Jersey.

Dr. Nasta admitted that she signed and completed her certification marked exhibit R-11. Dr. Nasta acknowledged that T.M. is her patient and that she authorized personal home health care for him. However, she said that she did not sign box 27 of the 485 form but the license number posted on the form is hers. She also said that the signature is not only not hers, but no one else's in her office. She testified that she authorizes her staff to sign such forms for her but they always show the forms to her.

She said that her office keeps copies of all forms signed for patients and the copies are kept in the patients' chart.

Dr. Nasta said that she authorized services for T.M. from November 2007 to May 2008; however the signatures on the 485's authorizing such services is neither hers nor anyone else on her staff.

(Emily Arowosaye)

Emily Arowosaye is the director of nursing for Be Kind Health Care Services. She has a Bachelor of Science degree in nursing.

Mrs. Arowosaye testified as to the procedures Be Kind uses to obtain the authorizations from a doctor. She stated that it is the role of the nurse to assess a patient's needs and to complete the 485 forms. Mrs. Arowosaye testified that once a patient is referred to their facility they immediately send a nurse out to do the personal care need assessment. She said the nurse then returns to the office with that assessment. The nursing staff completes the necessary forms including the 485 and sends them to the referring doctor. She said it usually takes anywhere from one to three weeks for the forms to be returned to them by the doctor. She stated that sometimes they would begin servicing the patient without the 485 being returned from the doctor. She also said that sometimes Be Kind received approval to service a patient before the 485 forms are signed by the doctor, it depended on the individual patient's needs.

(Isaac Arowosaye)

Isaac Arowosaye is the chief executive officer of Be Kind Health Care Services, Inc. He said he was the sole shareholder. Mr. Arowosaye said he had a Masters Degree in social work and political science from Rutgers University. He said that Be Kind had a staff of approximately 150 people which included clerks, home health aides, nurses and nurse assistants. He was responsible for the daily oversight of the personnel and office procedures. He said that he was duly licensed from the

Department of Consumer Affairs. And, he is accredited by the Community Health Accreditation Commission. He said that after his company was accredited he applied to Medicare and Medicaid to get a provider number.

Mr. Arowosaye said that he nor his staff received any training on how to complete the many different State forms and he had to hire a lady named Michele Wilson to show him and his employees how to complete the State forms. He said that as to the 485 form that is in question, that the State representative told him said form stays in his office in the patient's file. He said that he did not know that Patient Care Assistance (PCA) required a doctor's authorization.

Mr. Arowosaye testified that he had no knowledge as to how the doctors' signatures came about on the 485 forms in question. He said that at no time was he told that there was a problem with the 485 forms. He said that when he received the termination notice it was the first time he knew that there was a problem.

(Rita M. Smith)

Rita Smith testified on behalf of the Division of Medical Assistance and Health Services. She is a regional staff nurse responsible for the investigation and auditing of Medicaid providers. She is to make sure that Medicaid providers provide services within the Medicaid regulations. Ms. Smith testified that she has been a registered nurse since 1996 and has been with the Division of Medicaid for nine years.

Ms. Smith stated that she reviewed Be Kind's claims for four months. She said she reviewed the files of 237 beneficiaries and from that she randomly chose fifty files to specifically review. The object of her review was to match the 485 form care of plan to the home health aide notes and to then compare that to the claims submitted for payment.

Ms. Smith testified that the 485 form is a certification from the patient's treating doctor stating that home health services are needed and what those services should be.

Ms. Smith testified that every sixty-two days Be Kind was to submit 485 forms for certifications and re-certifications. Ms. Smith said that in her post-payment review of Be Kind she found a greater-than 10% error rate. As a result of that finding she put Be Kind on a pre-payment review status. Ms. Smith said that it was during these audits that she became suspicious of Be Kind's actions and she began to inspect the 485 forms in the patients' files.

Ms. Smith testified that it was she who contacted the physicians and asked them to confirm if they had indeed signed the 485 forms she attached. Dr. Siripurapu and Dr. Nasta stated that their signatures were not genuine. She said she discovered that Dr. Barnes, Dr. Ortiz, Dr. Siripurapu and Dr. Nasta reported that not only they did not sign the forms they never authorized Personal Care Assistance for some of those patients. She testified that some of the physicians' signatures were cut and pasted onto forms from other forms that had been indeed signed by a physician. She said that was the case with Dr. Siripurapu. See exhibits R-17 and R-18, box 27.

(Anthony Michael Mikalow)

Anthony Mikalow is an employee of UNISYS the Medicaid fiscal manager. He is an investigator. He testified that he was the investigator that took the written statement from Dr. Nasta.

(Christine Lamour)

Christine Lamour was employed by the petitioner from January 2007 until March 2008, she was a case manager. She handled the 485 forms. She testified that the procedure at Be Kind was for the nurse to go to a patient's house and make an assessment of the patient's condition and needs. The nurse then sends the assessment to the doctor for the doctor to authorize the assistance to be provided to the patient. Ms. Lamour testified that sometimes the doctor's would delay in sending the signed 485 forms back to Be Kind so she would be the one to make the phone calls asking for the signed 485 forms. She said that when the doctor signed the 485 forms it would be placed in the patient's chart or file.

(Gbenga Omosuyi)

Gbenga Omosuyi testified that she was the executive assistance to the chief executive officer of Be Kind. She was employed there from January 2007 until March 2008. Ms. Omosuyi testified that she often saw the 485 forms without an authorizing signature. She said when she saw that she would send the forms back to the doctor. She said that she never spoke to the doctor's themselves.

CONCLUSIONS OF FACT AND LEGAL AUTHORITY

Medicaid is a state administered federally funded program. The DMAHS is the responsible state agency. N.J.S.A. 30:4D-5, et seq. The purpose of the New Jersey Medicaid Program is to benefit the recipients of medical assistance, not to benefit the service providers. N.J.S.A. 30:4D-2. The Medicaid regulations prescribe provider agreement termination for good cause under numerous enumerated grounds. One of such grounds is for the presentment of false, forged or fraudulent claim services. N.J.A.C. 10:49-11.1(d)(2).

Be Kind as a provider of personal health services in the Medicaid program was required to comply with all of the relevant and applicable State and Federal laws, policies, rules and regulations. See Provider Agreement, Exhibit R-22.

I **FIND** that petitioner's patient records contained forged or falsified physician signatures for PCA services. The testimony and the documentary evidence produced during the hearing support such a finding. Doctors Ortiz, Siripurapu, Barnes and Nasta all testified and produced documentary evidence proving that they did not sign the 485 forms found in the patient records at Be Kind.

Rita Smith, respondent's nurse responsible for the investigation and audit of Medicaid providers testified that she reviewed Be Kind's claims for four months and discovered more than a 10% error rate. Because of such a high error rate she became suspicious and pursued her audit and investigation. Her suspicions were substantiated

not only by the physicians' statements but by documentary evidence as seen in Exhibits R-3 through -9, R-11, R-13, and R-15 through -21.

Be Kind did not dispute the testimony or the documentary evidence showing it falsified and/or forged the forms authorizing PCA. Be Kind argues that the authorizing forms, the 485's, were inconsequential because those forms are not submitted to Medicaid but are kept in their files in the patients' charts. Petitioner totally disregards that the regulations state that proper physician authorization is mandatory. The Medicaid provider agreement requires that a provider maintain the proper supporting documentation for any service it provides and expects Medicaid to pay. N.J.A.C. 10:49-9.8, et seq.

Because Be Kind provided PCA services it was required to adhere to N.J.A.C. 10:60-1.1, et seq., which specifically states that a PCA service provider must provide such services under the supervision of a registered professional nurse **as certified by a physician** in accordance with the written plan of care. N.J.A.C. 10:60-1.2 (emphasis added). A physician's certification for PCA services is a prerequisite to a provider seeking payment from Medicaid for those services. N.J.A.C. 10:60-3.4. The physicians that testified in this case testified that they did not certify to those patients' need of PCA services.

I **FURTHER FIND** that Be Kind's falsification of physician signatures is a breach of the Medicaid program rules. I **FIND** such a violation to be serious requiring immediate termination from the program. It shows a lack of integrity in Be Kind's business practices.

Mr. Arowosaye argues that he had no knowledge as to how the doctors' signatures came to be on the 485 forms. He also presented that the DMAHS never provided any training to him or his staff. I **FIND** such a defense irrelevant and inconsequential. Mr. Arowosaye as the chief executive officer of Be Kind is ultimately the responsible person for knowing and abiding with the laws and regulations pertaining to the Medicaid program. N.J.A.C. 10:49-1.4(f).

The Medicaid program is supported by taxpayer dollars; therefore, utilization of such public funds must be done in a manner using extreme fiscal caution, competence, honesty and integrity.

CONCLUSION

Having **FOUND** that petitioner falsified and/or forged 485 forms for the processing of Personal Care Assistance (PCA) to Medicaid beneficiaries, I **CONCLUDE** that the DMAHS was correct in terminating its contractual relationship with Be Kind Health Care Services.

ORDER

It is hereby **ORDERED** that Be Kind Health Care Services is **TERMINATED** from participating in the Medicaid program administered by the New Jersey Department of Human Services, Division of Medical Assistance and Health Services.

I hereby **FILE** my initial decision with the **DIRECTOR OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES** for consideration.

This recommended decision may be adopted, modified or rejected by the **DIRECTOR OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**, the designee of the Commissioner of the Department of Human Services, who by law is authorized to make a final decision in this matter. If the Director of the Division of Medical Assistance and Health Services does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within seven days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES, Mail Code #3, P.O. Box 712, Trenton, New Jersey 08625-0712**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 4, 2009



DATE

CARIDAD F. RIGO, ALJ

Date Received at Agency:

June 4, 2009

Date Mailed to Parties:

Ir

APPENDIX

WITNESSES

For Petitioner:

Christine Lamour
Gbenga Omosuyi
Isaac Arowosaye
Emily Arowosaye

For Respondent:

Rita M. Smith, R.N.
Anthony Michael Mikalow
Sucheta M. Nasta, M.D.
Dora Barnes, M.D.
Padma Siripurapu, M.D.
Thomas R. Ortiz, M.D.

EXHIBITS

For Petitioner:

None

For Respondent:

R-1 DMAHS termination letter, dated July 28, 2008
R-2 Certification of Dr. Barnes
R-3 DMAHS facsimile to Dr. Barnes, dated July 18, 2008
R-4 DMAHS Provider Information printout for Dr. Barnes
R-5 Certification of Dr. Padma Siripurapu, dated December 9, 2008
R-6 Statement of Dr. Siripurapu, dated November 20, 2008
R-7 Statement of Dr. Thomas Ortiz, dated November 20, 2008
R-8 Statement of Dr. Thomas Ortiz, dated December 9, 2008
R-9 DMAHS facsimile to Dr. Thomas Ortiz, dated July 2008

- R-10 DMAHS Provider Information printout for Dr. Ortiz
- R-11 Statement of Dr. Sucheta Nasta, dated November 20, 2008
- R-12 Statement of Dr. Sucheta Nasta, dated December 9, 2008
- R-13 DMAHS facsimile to Dr. Sucheta Nasta, dated July 2008
- R-14 DMAHS Provider Information printout for Dr. Sucheta Nasta
- R-15 DMAHS Spreadsheet of unauthorized claims, dated January 12, 2009
- R-16 CMS-485 Form for patient Morris (Dr. Barnes)
- R-17 CMS-485 Form for patient Cutler (Dr Padma), dated May 20, 2007
- R-18 CMS-485 Form for patient Cutler (Dr. Padma), dated November 20, 2007
- R-19 CMS-485 Form for patient Cutler (Dr. Padma), dated November 20, 2006
- R-20 CMS-485 Form for patient McDonald (Dr. Ortiz), dated March 26, 2007
- R-21 CMS-485 Form for patient McDonald (Dr. Ortiz), dated November 2007